



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY Access via relay - 711

Oral Comments from Madison Listening Session

December 9, 2003

The information contained in this summary is a transcript of public comments provided at the Madison listening session. Portions of the taped comments may not have been transcribed if inaudible. Names are spelled phonetically and may be misspelled.

Comments were received during two sessions. Session I was from 4:30 p.m. to 5:30 p.m. Session II was from 8:00 p.m. to 9:00 p.m. Time allotted to each speaker was based on the number of speakers that registered.

Session I

Man: -- have been doing the county planning process and we deal with a lot of those - the arguments on - on the county planning issue, which - and then we potentially have to deal with that again on a local level when it comes to Shoreland(?). So, I think as an organization standpoint, many of us were looking at it from the - hopefully some of these issues that we deal with, as zoning administrators, every day could have been - could be put to rest. And one comment about public comment too. Does this - by making this comment, does this - because you talked about duplication of comments. Would this prevent me from doing written comments and this isn't my - is this the only point or do you just need the names so that you can? Okay. Because I will be adding to the comments.

Moderator: You can always.

Man: Okay. Thank you.

Moderator: Okay. Dustin Grant - name and where you're from and if you represent anybody and Peter Murray, you'll be next.

Dustin Grant: My name is Dustin Grant, Marquette County. I am not representing anybody. I am a code enforcer for the county, though. One of the concerns I have is saying that a retaining wall is not a structure. We have a court decision that says it is a structure. And if you look at the definition, it meets every part of the definition except where it says it's exempt. So, there is a structure that is going to be too close to the water and I think that's going to create problems. People arguing what the difference between that and any other structure. It was mentioned before about a non-conforming lot having to be sold with another piece. That's a really bad idea. If a separate lot has a different id number, tax bill, etc. The two pieces of property are completely different entities. They are not - you don't look at the property already look at the property. And basically what this option is trying to do - it violates everything I know about legal non-conforming status on anything. And I think you need to really look at that as an individual piece of property, not - not look at the owner. That also would be very difficult to enforce. We don't require - a lot of places don't require anything to be submitted when real estate is transferred from one party to another. As a general - not as a general comment, the DNR, with these new rules, from what I've

experienced over the last year or two, may be one of the largest violators of their own ordinance. There has been at least three major examples in my county alone. The statutes, which unclear in the terms is zoning, supposedly exempt the state from its own rules. It's very difficult to go to a person and tell them, well you can't remove these trees or you can't do this within the 35 feet or build a structure within 75 feet or the water. However, the DNR can go in and do anything - do any of those activities and they have - whether it's thousands of yards of soil removed from the bank of stream, clear cutting over a thousand feet of shoreline, building decks and bridges in wetlands. Those are all things that the DNR is permitted to do, yet nobody else is allowed to. And I think it's very hypocritical that the DNR is going to try to do ordinance change like this, make it as restricted as it is, and yet go out and do the very exact same things that they're telling everybody else they can't do. I know I'm supposed to be in the - they're doing it under and guides of public interest and I think a lot of the things they're doing are not public interest. In fact, some of them are creating worse soil erosion problems in the - that trout stream I was talking about. They're worse now than they were before. And I would like them to take a look at that and possibly changing that part of the state statutes that say they're supposedly exempt. Thank you.

Moderator: Okay.

Peter Murray: Thank you for the hearing. We think they're great. My name is Peter Murray and I'm executive director of Wisconsin Association of Lakes. Through the three hundred and fifty so lake association and lake district members, we represent more than one hundred thousand lake shore property owners throughout the state. Our property owners and our constituents range all the way from those who want no regulation to those who want more stringent regulations than the proposals. However, since the hearings, we were notified of the hearings and received copies of the proposal. The only negatives that we have heard from our constituents are that the restrictions are not tight enough. Our property owners in addition to water quality, habitat, natural beauty, see as a major reason for regulations is the preservation or enhancement of their property value. There are at least two studies that I have seen in the last couple months that suggest that the value of property on lake shores is a direct correlation between the quality of the water in the lake and the value of that property. Higher quality, higher property value. Our constituents, I think, understand that regulations are necessary. While this may restrict some of their ability to do what they wish to do to their land, overall they are very much in favor of responsible regulation, responsible property ownership. That they can enjoy the lakes and their property value. We spent a lot of time as an organization trying to explain to our constituents what these proposals are. We would encourage Tony's son to become part of the - or daughter, I'm not sure which - to become part of the team such that the regulations when they are completed, the definitions are clear, the regulations are very easily understandable by all. And therefore can be administered fairly and consistently throughout the state. Thank you.

Moderator: Mr. Bramer followed by Jeff Smith.

Matt Bramer: Good afternoon. My name is Matt Bramer. I'm with Sauk County Planning and Zoning. I just have several topics I want to touch on. I'm sort of split hitting with my boss, so that I'm taking the last half of the - of the comments or sections. And he's taking the first half. Interestingly enough, I got the ones that Tony said needed addressing. So, agriculture was the one I started off with as an exempt - as an exempt, principally exempted practice. There's several aspects to this proposal that give me some concern. And one is buffers. If the buffers are as important as Tony eluded to you in her presentation, which I tend to agree with, then there's language there that exempts - non-structural agricultural practices due to compliance with NR151. Unfortunately, NR151 is only enforceable if there's cost share in place. And there isn't. So, I would strongly encourage that we refer those practices to NR115 and see to it that they're actual and real practices that have some teeth because otherwise, it's just a paper. Setbacks non-conforming structures if the setbacks, again, are important then they should apply to all facilities in the interest of the water quality. At this point a rhetorical question: Why did the department choose the figure

of 115% of the cost of structure? Why not 120 or 150% in terms of finding a more compliant area. And under mitigation, I think to avoid litigation, that the phrase "if possible" should be eliminated because it will always be possible for a lawyer to find a place that a buffer is possible to eliminate. And then finally, one of the things that our county is running to an issue with definition is please define livestock. We need to know which of the following are not livestock: cows, pigs, horses, sheep, and goats. And if one of those livestock - or do you need a whole bunch of them? In the section on forestry, a scenario I might say is there are currently cutting restrictions on land within 35 feet of shore lands. However, as I read the proposal, if I define my partial as forestland, does that mean I can cut all the way down to the - because it would be exempt. You'd have to only follow a best - best matched practice, which is potentially would allow me to clear cut down to the water's edge. And it does say in there that I can be - I can call my land forestland without necessarily having it enrolled in a program. And under sanitary regulations, I would strongly recommend - and I think I heard Toni say this - that NR115 referred to COM83 in terms of compliance with those sanitary regs as opposed to ignoring that fact that it exists. I think in the proposal it - it wasn't as clear as I would like it to be. It sort of says, hey you know, we already have COM83 so we're not going to address it. I would rather that 115 addresses it and refers to COM83 as the things - authority. And then finally, in terms of equity - and this is sort of a posturing question, but since equity was an important part of the presentation. In terms of equity and water quality throughout that state, is there any effort to apply some of these standards to incorporated areas as well? Thank you.

Moderator: Thank you. Jeff Smith followed by

Joe: Jeff is not here.

Moderator: Okay, then Lance followed by Donna Sefton.

Lance Gurnee: My name is Lance Gurnee. I am director of planning and zoning for Sauk County. And I'm here under the direction of my oversight management comity from the county - the planning and zoning land records comity. I had an opportunity to discuss the proposals with my kid comity yesterday at our regular meeting. And it was directed to them to come to this meeting and testify on several of the issues. Before I go by section by section, I hope to follow Matt rather than - or proceed Matt rather than follow him. But before I go into my point by point comments on sections 1-10, I did want to reiterate the issue about combining lots of record or legal non-conforming lots as - if you're not familiar with Sauk County, Cheryl Albers - representative Cheryl Albers is our legislative representative to the assembly. And I know Cheryl would take issue to combining legal lots of record in terms of taking as legislation and invested rights when those lots were legally created - that they obtain. So, I'm sure my county board would reiterate the same thing on that and urge the DNR to more clearly define exactly what they are proposing to do there to hopefully avoid litigation as it was put before. Going through the sections, I did have a couple comments that I just request for clarification. Section number 2 under the proposed rules ordinary high water marks setbacks. There's a statement in the handout that was provided, which is actually the second bullet point. It says small structures that are easily moved by hand, such as picnic tables, lawn chairs, bird baths, and canoes that are moved out of the shore land setback area for the winter. I deal with ordinances quite a bit and I deal with drafting ordinances quite a bit and we like to use the term: which include but are not unlimited to. And I would ask that in terms of legal that we try to use language that's common. Moving on under section 3 - Non-conforming structures. I see there is a term coined in there that is not defined. It's unlimited repair and replacement. I'm assuming the intent is to let the counties determine what that means. I guess that's a concern for me. And I share the same comments that Bruce did before that I'm looking for - I understand that the state's DNR's desire is to create the minimum or base package of rules here and I'll let the counties also add additional rules as they see fit. But in some instances, we need some direction. And that seemed to be one of the - moving on to section - it's still until section 3. I would be remiss if I didn't comment as a county code administrator on major reconstruction. I guess my - my simple comment is, can you come up with something a little better?

25% or more of the structural components of the building. I don't think there's anyone who is going to volunteer to go out and start cutting - counting joys or rafters to determine the amount. I think that's very poor language. And 50% or more of the linear perimeter of the structure. That's another concern I would have. Also, the major reconstruction doesn't identify whether or not it's accumulative or if it's during the life of the structure. So, I'd really urge the comity that's working on this to think a little bit more indepthly about major reconstruction and what you're trying to accomplish there. And how we're going to enforce it. Under section 6 - lot size reduction for conservation development. There's a provision in there or ideas in there to dedicate at least 40% of the partial lands conservation areas. In Sauk County, we have roughly 2200 miles of shoreline and almost 7,000 acres of water in the county. The problem we have is public access. If we're going to be doing conservation subdivisions, or conservation developments, I would urge the comity to think about requiring developers to provide access on the water. The 40% as listed under this section is off of the water. And so it really doesn't help the issue that we have. I use Lake Wisconsin as an example. We have one public access to that property that is owned by the DNR and one by the county on Sauk County's side. And that's basically from I94 interstate - the bridge there - all the way down to Sauk Prairie - Sauk City. Both of those facilities are inadequate to serve the demand by the public for that. Subsequently, we've had numerous subdivisions that have been approved in the last 10 years that really didn't help address the situation. We're kind of getting tied up. Under section 7 - ordinary high water marks, setback reductions, and non-conforming lot provisions. There's options for stepped approach. Step 1 I understand, however I do have 2 questions there. What if the adjacent building was illegally created? It doesn't seem to give us any direction in that instance. Number 2, what buffer are we actually talking about? This is really, I think a position might be determined by are we talking about a 50 foot buffer or a 35 foot buffer? Also number 2, step number 2, the county is opposed to it. Flat out. I think the provisions under - to number 2 are accomplished under number 3 and so we really don't need a number 2. In terms of number 3, the direction we received was that would make sense if that number 3 condition is a condition we would use. Or a special exception. And this is a nice laundry list of issues or concerns for the Board of Adjustment to consider when making a decision. Probably the best prescriptive thing that I've seen come in a long time to help BOAs make decisions on these issues. Boards of Adjustment for those of you who are not familiar with the slang, I apologize.

Moderator: Do you have a lot more to go? Or...

Mr. Gurnee: Just a little bit.

Moderator: Okay.

Mr. Gurnee: Number 8 - Filling and grading. Retaining walls, I believe, one county code administrator or employee met - had voiced some concerns on this. But I have 2 and they're very simple. What type of materials to create the wall? And what is the height limitation? Is there a height limitation on that wall? And then finally, under number 10 - Mitigation Provisions. There is 2 terms used in this section roughly proportional in magnitude of the impacts that the county has major problems with in terms of future litigation potential. It's too subjective. What exactly do the terms mean? In terms of enforcing this, I think we're - we're touching on the terms arbitrary and capricious in terms of litigation and I would ask that the comity put more thought into exactly what we're trying to accomplish: number 1 and how we're going to enforce it: number 2. That concludes my comments. Thank you.

Moderator: Donna Sefton followed by Sheehan Donahue.

Donna Sefton: Hello my name is Donna Sefton and I'm just an ordinary citizen. I grew up in northern Wisconsin and spent a lot of time on the lakes and streams and wetlands up there. And that led me to following education specialized in an aquatic ecology. And I went to UW Whitewater and UW Lacrosse to get my degree and did a lot of lake and stream work while there. And so I speak from the standpoint of

user of the resources and someone that loves Wisconsin water. And also someone who has a scientific background in understanding them and what effects their quality and ability. And I really appreciate the opportunity for these listening sessions and my main point is that I urge strong protection for our shore land areas. I have seen tremendous change in the lakes and streams up north where I grew up in the past 50 years. And I'm afraid of what the future may hold. One of the major things that we need to have is strong buffer areas. These help to protect not only from polluted runoff, but also provide for the wildlife habitat and natural scenic beauty that helps support our tourism economy and our quality of life in the state. The viewing access corridor when I'm out on the lake fishing and - or just enjoying the natural scenic beauty, I'd really prefer to look at trees and birds and wildlife and catch fish, rather than at lawns and houses. So, I encourage proposal A there in having the narrow viewing corridor. Generally, in all of these, I support proposal A: the more stringent provision. And I really encourage that there be ? that ? surfaces really expedite the runoffs and delivery of pollutants to the lake or stream. And so really would like to see those kind of limits in place. I'll be submitting much more details/comments, but I just wanted to say thank you for this process and having an opportunity to speak. And please continue to work on protecting the public trust and doing your job as defenders of that public trust. Thank you. I also wanted to mention that there is an educational CD and website that's available that Headwaters Base and Partnership Team in Wisconsin Network puts together. And it's free. You can order it by - from the website, which is www.theshorelandconnection.org. And there are fliers out - I think out by the registration desk where you can order it. Thank you.

Moderator: Sheehan Donahue followed by --

Sheehan Donahue: Thank you. My name is Sheehan Donahue and really I'm speaking as - as an individual who has been fortunate enough to grow up in a family up in northern Wisconsin who has a cottage on a lake. And they've been there for 110 or 111 years. So, I had an opportunity to, you know, during my lifetime - it's getting longer every day it seems - observe the condition of the lake up the Vilas County. It's Plum Lake. And to observe and be able to view that lake and other lakes in this state. I'm here because of my concern regarding what authority is going to be granted to the county over the maintenance of dry or wet boathouses. I'm fully cognizant of the fact that chapter 30 of the Wisconsin statutes governs the repair of wet boathouses. ? the legislation it allowed individuals to repair their boathouses just below the waterline. When I was in one of my other lives as a state legislator. Well, I recognize that technically a rule that will arise out of these listening sessions will not directly effect the way in which the department interprets the 50% rule as it relates to wet boathouses. I want to express my concern today about the limiting of dry boathouses within the ordinary high water mark buffer zones - the immediate shore land zones. I'm also curious about why the department doesn't work towards interpreting the 50% rule for what boathouses - in the way in which was initially intended when I drafted it, but I digress. The dry boathouses require a mechanism to draw the boats up out of the water up into the boathouse. Most of these are mechanized. There are very few that I know of that are done by hand. The further from the shore that these structures are placed, the greater cost to the individual who is putting them in. In addition, and perhaps most importantly so, particularly after this summer, the mechanized systems used to draw the boats up are or can be extremely dangerous. This summer, an individual was operating a boat life on our lake - on Plum Lake in Vilas County and he was drawing the boat up and was crushed to death. And unfortunately, this type of accident can occur. And I believe that when you have boathouses - dry boathouses that are set further and further back, you present an opportunity for more accidents to occur. For instance, boats can jump off the track, they can get stuck and somebody will go down to try to get them unstuck and have a very bad accident. Lines snap; that type of thing. Plus the fact that many of the boathouses - many of the dry boathouses are set into hills because there are steep banks going down. And in fact if it's going to be required that they be set back further than that, you might as well just call it a garage and put it behind a house, quite frankly. In addition to that, if the lot size is perhaps set at 100 feet of frontage, people will be very hard put to sight a dry boathouse within an area that would be safe in terms of drawing up the boat out of the water into the dry boathouse without

totally blocking their view. They really will be forced to going to the back lot or the back ? of the lake lot. Many of the wet boathouses have historic value and I would hope that the department would look at perhaps applying the elimination of the 50%, even though I realize it statutory. But, if you're going to be doing any statutory revisions, at least looking at eliminating the 50% requirement based upon the assessed evaluation. Anyway, I think that's about it. I will be submitting addition comments written and I will be throwing out the longer the survey slip or whatever you want to call it. I appreciate the opportunity to appear here. Thank you.

Moderator: Okay.

Donna DePap: Hi. My name is Donna DePap and I live in Madison. I am fortunate enough to overlook Lake Monona. And I also spend quite a bit of time up in northern Wisconsin in Vilas County. I am currently president of the Anvil Lake Association there. And I'm going to send in written comments as well, but what I wanted to say today, primarily, was I'm concerned that we have strong protections for the waters - for the lakeshores. I look at the difference between the lakes down here in southern Wisconsin and the ones up north and the changes that are occurring as there is more development. I'm concerned about habitat protection, particularly the effects the development have on songbirds and loons and fisheries. And I also think that there is a potential for a strong economic impact if the development continues at the rate that it's going without these stronger protections that we're going to lose what people are looking to find, especially in northern Wisconsin. And that - I know that some of the people concerned about these restrictions feel that that's going to have an economic impact in development. But I think that in the long run, we're going to have a far greater impact if we destroy unwittingly in some ways by the way we choose to live and create our homes and our sanctuaries that we're going to lose what we have. And I just - I applaud the process that you have undertaken here and input that you're requesting. And I also ask that you work as hard as you have been to protect. So, I'll put my additional comments in written form. But thank you.

Moderator: Thank you very much. Are there any other comments that I didn't get? Then I think we're ready to close this session. And thank you very much for coming. We really appreciate it

Session II

Don Hamas: My name is Don Hamas and I'm the conservation chair for the Dane County Conservation League and the Yahara Fishing Club. And I'm not able to speak for those 2 organizations tonight because I was not - they only meet once a month and I wasn't able to get through the process for approval. But I've been speaking for those 2 organizations for about 10 years now and generally, I think it's safe to say I represent their feelings in most instances. I have been interested in this regulation and the change of it since I first heard about it some time ago. And from time to time, I have tried to keep acquainted with the proposals that are being presents and some of the debate that's going on. Quite frankly, I'm not well acquainted with all of the details in the proposed regulation, but I am acquainted with the issues that are involved and the process that's been followed to come to where you are today. And I think I would like to, first of all, comment on the process. I think it's been over a year, as I understand it, and over 25 people are involved in the advisory committee representing both the landowners and the public. And through many meetings, as I understand it, these issues were discussed and both the public interest and landowner interests were covered. And so I'm very pleased with the process that was followed. It's a lengthy process for some people. It's too long and which that it would go faster because this regulation, I believe, is over 30 years old and has not been changed for many years. So, the question arises is why are we changing it now? Why not wait another 30 year? And I think as most people in this room probably know that the rate of development in Wisconsin, in particular in some areas is quite significant and there's an opportunity for a lot of damage to be done to our lakes and streams. If they're not protected a little bit more than they are in the present regulation. Landowners also have a stake in this and it's important that

their interests are represented also and I think they have been represented. And so I think, in particular, conservation league people are interested in the regulation that pertains to buffer zones and the creation of buffer zones to prevent cropping and construction of buildings on stream banks and close to lake edges and those provisions that concern the buffer zones. So I may - go to your website. I understand you can make comments there. I may do more. But I did want to make an effort to come here tonight and speak in support of this regulation and I hope you're successful in getting it passed. Thank you very much.

Moderator: Okay. I'll ask again. Is there anybody else that would like to make a public comment? Alright. Not seeing anybody, I would like to thank you all for coming. We'll be around for a little while if you've got more questions.